

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Performance Measurements and Standards for)	
Interstate Special Access Services)	CC Docket No. 01-321
)	
Petition of U S West, Inc., for a Declaratory)	
Ruling Preempting State Commission)	CC Docket No. 00-51
Proceedings to Regulate U S West's Provision)	
of Federally Tariffed Interstate Services)	
)	
Petition of Association for Local)	
Telecommunications Services for Declaratory)	CC Docket Nos. 98-147, 96-98, 98-141
Ruling)	
)	
Implementation of the Non-Accounting)	
Safeguards of Sections 271 and 272 of the)	CC Docket No. 96-149
Communications Act of 1934, as amended)	
)	
2000 Biennial Regulatory Review -)	
Telecommunications Service Quality)	CC Docket No. 00-229
Reporting Requirements)	
)	
AT&T Corp. Petition to Establish)	
Performance Standards, Reporting)	
Requirements, and Self-Executing Remedies)	RM 10329
Need to Ensure Compliance by ILECs with)	
Their Statutory Obligations Regarding Special)	
Access Services)	

COMMENTS OF THE RURAL ILEC COALITION

Benjamin H. Dickens, Jr.
Gerard J. Duffy
Douglas W. Everette
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, NW - Suite 300
Washington, D.C. 20037
Telephone: (202) 659-0830
Facsimile: (202) 828-5568

Date: January 22, 2002

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COMMENTS OF THE RURAL ILEC COALITION

Cascade Utilities, Inc.; Harrisonville Telephone Company; PBT Telecom, Inc.; Santel
Communications Cooperative; Schaller Telephone Company; and United Telephone
Association, Inc. (collectively, the "Rural ILEC Coalition" or "Coalition") hereby submit their

comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in this proceeding.¹

The Coalition is aware of no instances where rural incumbent local exchange carriers ("ILECs") have been determined by this Commission or a state commission to have provisioned special access services in an unjust, unreasonable and/or discriminatory manner. Moreover, even assuming arguendo that there have been a few isolated instances of such provisioning by rural ILECs, there is plainly no perceptible pattern of inadequate or inappropriate provisioning that warrants the imposition of costly and burdensome new performance measurements and standards upon rural ILECs. Therefore, the Commission should not impose performance measurements and standards for special access provisioning upon rural telephone companies, and should expressly exempt them from any such requirements imposed upon the Regional Bell Operating Companies ("RBOCs") and other large carriers.

Introduction

The members of the Coalition are all rural telephone companies and rural ILECs that presently provide, or that have plans to provide, special access services.

The Commission has repeatedly recognized that rural ILECs differ from their larger counterparts in that they have higher operating and equipment costs, lower subscriber densities,

¹ Performance Measurements and Standards for Interstate Special Access Services, et al., *Notice of Proposed Rulemaking*, CC Docket No. 01-321, FCC No. 01-339 (rel. Nov. 19, 2001) ("NPRM"). Pursuant to the Commission's subsequent *Order*, the pleading cycle for comments and reply comments in the above-captioned proceedings were extended by 13 days (DA 01-2911)(rel. December 17, 2001).

smaller exchanges, and limited economies of scale.² As the Commission has noted, the Rural Task Force has described these differences in more detail, as follows:³

The Rural Task Force found that rural carriers are significantly different from non-rural carriers, and that individual rural carriers vary widely from each other. Rural carriers generally serve more sparsely populated areas and fewer large, high-volume subscribers than non-rural carriers (footnote omitted). The isolation of rural carrier service areas creates numerous special challenges, including high loop costs, high transportation costs for personnel, equipment and supplies, and the need to invest more resources to protect network reliability (footnote omitted). In addition, rural carriers generally have fewer customers per switch, higher total investment in plant per loop, and higher plant specific expenses per loop than non-rural carriers, all of which may vary dramatically depending on how many lines they serve (footnote omitted).

Rural ILECs also have much smaller administrative and operational staffs than larger ILECs, and are not able to achieve significant economies of scale from specialization of tasks and functions. Rather, rural ILEC managers and employees tend to be assigned a much larger and more varied set of tasks and responsibilities than their counterparts in larger ILECs.

**The Commission Should Exclude Or Exempt Rural ILECs
From Any Special Access Performance Measurements And Standards**

At paragraph 15 of the *NPRM*, the Commission asked whether performance measurements and standards for special access provisioning would impose disproportionate costs

² See e.g., Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Fourteenth Report and Order, Twenty-Second Order on Reconsideration*, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, at para. 5 (released May 23, 2001) (“*Rural Task Force Order*”); and Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, *Second Report and Order and Further Notice of Proposed Rulemaking* in CC Docket No. 00-256, *Fifteenth Report and Order* in CC Docket No. 96-45, and *Report and Order* in CC Docket Nos. 98-77 and 98-166, FCC 01-304, at para. 4 (rel. November 8, 2001) (“*MAG Order*”).

³ *MAG Order* at para. 28.

or burdens on small, rural, or mid-sized ILECs. It asked whether any performance measurements, standards and reporting requirements that it might adopt for special access services should only apply to a subset of ILECs (e.g., the RBOCs and other large ILECs).

The Commission correctly recognizes that there are significant differences between large and small ILECs. The Coalition does not know whether or not performance measurements, standards and reporting requirements for the provisioning of special access are necessary or feasible for large ILECs. However, with respect to rural ILECs, the significant costs of such requirements exceed their imperceptible benefits by such a large margin that the Commission should exclude or exempt rural ILECs from any requirements that it adopts herein.

As noted above, the Coalition is not aware of any instances where rural ILECs have been found by this Commission or a state commission to have provisioned special access services in an unjust, unreasonable and/or discriminatory manner. Even if there have been a few isolated instances unknown to the Coalition, there still has been no significant history or pattern of inadequate or inappropriate special access provisioning by rural ILECs. Consequently, there are no perceptible benefits to be obtained by imposing new performance measurements, standards or reporting requirements upon rural ILECs. In other words, if the rural ILEC special access provisioning system is not broken, there is no reason to fix it.

In sharp contrast, compliance with new performance measurements, standards or reporting requirements would be very burdensome and expensive for rural ILECs. Their ordering, scheduling and accounting systems -- both computerized and manual -- would need to be modified to collect and process the necessary data. Their small administrative and operating staffs would need to be trained and/or expanded to assume new data collection, recording,

monitoring, analysis and reporting functions. It is also likely that rural ILECs would incur significant legal and consulting fees to comply with the new requirements.

Employing a cost-benefit analysis, it is clear that the Commission should exclude or exempt rural ILECs from any new performance measurements, standards or reporting requirements. In the absence of any history or pattern of provisioning problems regarding rural ILECs, the “benefit” of imposing such requirements upon rural ILECs is “zero.” In the absence of a perceptible benefit, virtually any new or additional regulatory cost is excessive. Here, the additional data processing, personnel and consulting costs will be significant, and will place an undue and unreasonable burden upon the limited resources of rural ILECs.

**The Commission Has Traditionally Exempted Rural ILECs
From Burdensome Record Keeping And Reporting Requirements**

The Commission has been sensitive to the unique administrative burdens imposed on small telephone companies by the application of its rules. For example, in the *LEC Price Cap Order*, the Commission recognized that small telephone companies should not be forced into a regulatory paradigm that was designed largely on the basis of historical performance by the largest LECs, and exempted small telephone companies from price cap regulation.⁴

Likewise, whereas large ILECs are required to prepare and file cost allocation manuals (“CAMs”) setting forth the cost allocation procedures they use to allocate costs between regulated and nonregulated services, small carriers are exempted from this record keeping and

⁴ Policy and Rules Concerning Rates for Dominant Carriers, *Second Report and Order*, 5 FCC Rcd 6786, 6821 (1990), *Erratum*, 5 FCC Rcd 7664 (Com. Car. Bur. 1990) (*LEC Price Cap Order*), *modified on recon.*, 6 FCC Rcd 2637 (1991).

reporting requirement.⁵ The Commission noted that small carriers are not required to perform audits of cost allocation data, nor are they required to obtain attestation audits.⁶

Similarly, the Commission adopted the reduced small company access tariff filing requirements in Section 61.39 of its Rules “to eliminate unnecessary direct regulatory burdens affecting small telephone companies, thereby decreasing regulatory costs.”⁷

Moreover, the Coalition notes that the Regulatory Flexibility Act (RFA) directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the Commissions rules.⁸ In enacting the RFA, Congress determined that the practice of treating all regulated businesses as equivalent may lead to inefficient use of regulatory agency resources and that the failure of Federal agencies to recognize “differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity.”⁹ Therefore, the Commission should make the distinction, as supported in these

⁵ 47 C.F.R. §64.903. ILECs with annual operating revenues equal to or above \$117 million are required to file CAMs. *See* Annual Adjustment of Revenue Threshold, *Public Notice*, DA 01-903 (rel. Apr. 11, 2001) (adjusting annual indexed revenue threshold to \$117 million).

⁶ *See*, Section 257 Report to Congress; Identifying and Eliminating Market Entry Barriers For Entrepreneurs and Other Small Businesses, 2000 FCC LEXIS 4245 at para. 33 (FCC 00-279) (rel. August 10, 2000); Separation of costs of regulated telephone service from costs of nonregulated activities; Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to provide for nonregulated activities and to provide for transactions between telephone companies and their affiliates, 2 *FCC Rcd* 1298 (*Report and Order*)(1986).

⁷ Regulation of Small Telephone Companies, Report and Order, CC Docket No. 86-467, *Report and Order* 2 *FCC Rcd* 3811 (1987)(Carriers with 50,000 access lines or less, or carriers categorized under subset 3 allowed to file tariffs under the small company rules).

⁸ 5 U.S.C. § 603(b)(3).

⁹ Regulatory Flexibility Act Sept. 19, 1980, P.L. 96-354, § 2, 94 Stat. 1164 (a)(4). *See* also 47 U.S.C. 160.

comments, between small, rural ILECs and large ILECs that draws a line consistent with its longstanding policies, rules, and the RFA.

The Commission Should Also Exclude Rural ILECs From Any Performance Measurements And Standards For UNEs and Interconnection

The Coalition agrees with the Commission that the implementation concerns regarding performance measurements and standards for unbundled network elements (“UNEs”) and interconnection are substantially similar to those for special access provisioning.¹⁰ Rural ILECs will incur similar administrative burdens and costs to comply with performance measurements and standards for UNEs and interconnection, even though there is no history or pattern of rural ILEC problems with respect to the provisioning of UNEs or interconnection. As the Commission has noted in CC Docket No. 01-318, “[a] key objective of this [UNE and interconnection] proceeding is to adopt performance measurements and reporting requirements that will not ultimately increase the overall regulatory burdens on carriers, particularly small entities.”¹¹ Accordingly, the Coalition believes that the Commission should also exclude or exempt rural ILECs from any performance measurements, standards and/or reporting requirements that it adopts for UNEs and interconnection in CC Docket No. 01-318.

Conclusion

The Commission should exclude or exempt rural ILECs from any performance measurements, standards, and/or reporting requirements that it adopts in this proceeding

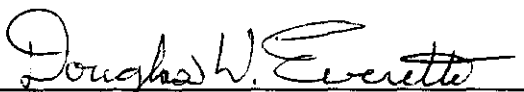
¹⁰ *NPRM* para. 18.

¹¹ Performance Measurements and Standards for Unbundled Network Elements and Interconnection et al., CC Docket No. 01-318; *Notice of Proposed Rulemaking* at para.106.(rel. November 19, 2001).

regarding the provisioning of special access services, or in CC Docket No. 01-318 regarding UNEs and interconnection. The benefits of such new requirements are non-existent because rural ILECs have not been provisioning special access, UNEs or other interconnection services in an unjust, unreasonable and/or discriminatory manner. In contrast, the additional data processing, personnel and consulting costs necessary to implement the new record keeping and reporting requirements will be significant, particularly for small companies like the rural ILECs. Therefore, the Commission should continue its traditional policy of excluding or exempting rural ILECs from the contemplated new requirements.

Respectfully submitted,

THE RURAL ILEC COALITION

By 
Benjamin H. Dickens, Jr.
Gerard J. Duffy
Douglas W. Everette

Its Attorneys

Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, NW - Suite 300
Washington, DC 20037
Telephone: (202) 659-0830
Facsimile: (202) 828-5568

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CERTIFICATE OF SERVICE

I, Douglas W. Everette, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that copies of the foregoing "Comments" were served by first class U.S. mail or hand delivery on this 22nd day of January, 2002, to the persons listed below:

Magalie R. Salas, Secretary
Federal Communications Commission
Portals II, TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

Janice Myles
Policy & Program Planning Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street S.W.
Washington D.C. 20554
(diskette)

Qualex International
Portals II
445 12th Street S.W., CY-B402
Washington, D.C. 20554
(paper & diskette)


Douglas W. Everette